

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

WP(C).No. 30323 of 2006(I)

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OS.41/2004 of I ADDL.SUB COURT,TRIVANDRUM  
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PETITIONER:

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NIZAR, S/O.SHAHUL HAMEED,  
AGED 44 YEARS, T.C.NO.37/21,  
NEAR GANAPATHY TEMPLE, PAZHAVANGADI,  
VANCHIYOOR VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA  
SRI.M.S.KALESH  
SRI.M.R.SARIN  
SRI.HARISH GOPINATH  
SRI.V.VINAY MENON  
SRI.KIRAN SANKAR

RESPONDENTS:

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A.NAGAPPAN, S/O.ABRAHAM,  
AGED 65 YEARS, T.C.NO.50/1145(1),  
SAROJ, THALIYAL, MANACAUD VILLAGE,  
THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

## APPENDIX

Ext.P1:- True copy of the plaint in OS No.41/04 on the file of the Ist Additional Sub Court, Thiruvananthapuram.

Ext.P2:- True copy of the promissory note of Rs.2,00,000 dated 15.11.2001.

Ext.P3:- True copy of the suit notice dated 09.1.2004 issued by the respondent to the petitioner.

Ext.P4:- True copy of the reply notice dated 13.01.2004 issued by the petitioner to the respondent.

Ext.P5:- True copy of the written statement filed by the defendant in OS No.41/04.

Ext.P6:- True copy of the IA No.4391/2004.

Ext.P7:- True copy of the objection filed by the plaintiff in IA No.4391/04.

Ext.P8:- True copy of the memo submitted by the petitioner.

Ext.P9:- True copy of the order in IA No.4391/04 dated 09.08.2006.

/true copy/

P.S. To Judge

**M.SASIDHARAN NAMBIAR, J.**

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W.P. (C) NO.30323 OF 2006

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Dated this the 19<sup>th</sup> day of December, 2006

**JUDGMENT**

Petitioner is the defendant and respondent the plaintiff in O.S.41/04 on the file of Ist Additional Sub Court, Thiruvananthapuram. Petitioner filed an application to send the disputed promissory note for examination by an expert. Learned Sub Judge permitted the prayer but directed the petitioner to furnish a list of experts. Court was satisfied that if the document is to be sent to the Forensic Science Laboratory because of the pendency of work therein, report will not be received for years. Petitioner did not furnish any list. As a result, under Ext.P9 order court dismissed the application. This petition is filed under Article 227 of the Constitution of India challenging Ext.P9 order.

2. Learned counsel appearing for petitioner and respondent were heard.

3. The argument of learned counsel appearing for petitioner was that learned Sub Judge should have sent the document to the Forensic Science Laboratory and in any event should not have dismissed the application. On appreciating the submission, I do not find any reason to interfere with the discretion exercised by the learned Sub Judge in exercise of the supervisory jurisdiction of this court. Court directed to forward the disputed promissory note to a private expert because of the delay caused in getting a report from the Forensic Science Laboratory. When petitioner fails to submit the panel, court has no other go but to dismiss the application.

4. Learned counsel appearing for petitioner submits that petitioner may be granted an opportunity to furnish a panel. If petitioner files a panel of experts within twenty days from today, learned Sub Judge may chose one of the experts and forward the documents as prayed for, at the expense of the petitioner. If he fails to

submit the panel, learned Sub Judge has to proceed with the suit without forwarding the documents.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR  
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

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W.P.(C).NO. /06  
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JUDGMENT

SEPTEMBER,2006